

---

**Sent:** 10/02/2021 2:44:02 PM

**Subject:** 6 Mitchell Road Palm Beach 2108 DA 2021/1596 WRITTEN SUBMISSION:  
LETTER OF OBJECTION Submission: Thomas

**Attachments:** T H O M A S submission.docx;

SUBMISSION: THOMAS  
a written submission by way of objection to DA 2020/1596

David Andrew Thomas & Elizabeth Helen Thomas  
5 Mitchell Road  
Palm Beach  
NSW 2108

10 February 2021

Chief Executive Officer  
Northern Beaches Council  
725 Pittwater Road  
Dee Why  
NSW 2099

Northern Beaches Council  
[council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Dear Chief Executive Officer,

Re:  
6 Mitchell Road Palm Beach 2108  
DA 2021/1596

**WRITTEN SUBMISSION: LETTER OF OBJECTION**  
**Submission: Thomas**

This document is a written submission by way of objection to DA 2020/1596 lodged under Section 4.15 of the EPAA 1979 [the EPA Act].

The DA seeks development consent for the carrying out of certain development, namely:

*the demolition of existing structures and construction of a new four-storey dwelling and associated works at 6 Mitchell Road, Palm Beach.*

Construction Cost: \$2.56m

The subject site is zoned Zone RE1 Public Recreation and Zone E4 Environmental Living pursuant to the LEP, and there is no reason, unique or otherwise, why a fully compliant solution to pursuant to the provisions of LEP and DCP controls, as appropriate, cannot be designed on the site.

We are being assisted by a very senior experienced consultant assisting us in the preparation of this Written Submission.

## CONTENTS

Section 1: Executive Summary

Section 2: Characteristics of our Property

Section 3: Site Description & Location

Section 4: Description of Proposed Development

Section 5: Outstanding Information

Section 6: Statutory Planning Framework

- LEP
- DCP
- NSW LEC Planning Principles
- Section 4.14 [1] of EPAA 1979

Section 7: Amended Plans

Section 8: Conclusion

Appendix

## SECTION 1: EXECUTIVE SUMMARY

This Written Submission asks Council to request that the Applicant submits Amended Plans to resolve the matters raised within this Submission, and failing a comprehensive set of amendments undertaken by the Applicant as identified within this Submission, to ask the Applicant to withdraw the DA, or if that is not forthcoming, to **REFUSE** this DA.

The bulk and design of the proposed works are not compatible with neighbouring development and will be a negative contribution to the scenic amenity of the area when viewed from surrounding viewpoints, particularly our property.

The development is of poor design quality which does not respond appropriately to the constraints of the site. The proposed development fails to maintain appropriate levels of amenity to the adjoining and nearby residential properties.

The multiple areas of non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. The proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

The proposed development is a clear case of overdevelopment.

- **Building Height 10.62m v 8.5m 25% non-compliance [73.60 roof v 62.98 survey]**
- **Landscape Area c.20% of site area proposed v 60% control 300% non-compliance**
- **Front Setback Zero v 6.5M >1000% non-compliance**
- **Rear Setback 1.2m v 6.5m >540% non-compliance**
- **Side Setback & Building Envelope fails control**

## **Main Concerns**

The non-compliance to standards leads directly to our amenity loss.

Our main concerns are:

- Prohibited Development
- Construction & Demolition
- Landscaping
- View Sharing
- Solar Access
- Visual Privacy
- Acoustic Privacy
- Character as viewed from a public place
- Front building line
- Side and rear building line
- Building envelope
- Landscaped Area - Environmentally Sensitive Land
- Construction, retaining walls, terracing and under-croft areas
- Scenic Protection Category One Areas

We want to emphasise the fact that we take no pleasure in objecting to our neighbour's DA.

The Applicant has had no prior adequate discussion with us regarding to this DA.

We are objecting because the proposed DA has a very poor impact on the amenity of our property and this is caused by the DA being non-compliant to multiple controls.

It does seem very unreasonable that this proposed development will remove our amenity to improve the amenity of the proposal, and is proposing a catalogue of non-compliant outcomes that would poorly affect our amenity

The proposed development is considered to be inconsistent with the outcomes, controls and objectives of the relevant legislation, plans and policies.

The DA scheme submitted requires to be substantially amended due to the development proposed that is prohibited development, non-compliant Building Height, Landscape Area, Front Building Line Side And Rear Building Line and Building Envelope

We ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to refuse the DA or condition the consent.

We are concerned to the non-compliance to LEP & DCP:

#### **Pittwater Local Environmental Plan 2014**

##### 1.2 Aims of Plan

##### Part 2 Permitted or prohibited development

- Zone RE1 Public Recreation
- Zone E4 Environmental Living
- 88B Instrument – Terms of Easements and Restrictions

##### 4.3 Height of buildings

##### 4.6 Exceptions to development standards

##### 5.10 Heritage conservation

#### **Pittwater 21 Development Control Plan**

##### A1.7 Considerations before consent is granted

##### A4.12 Palm Beach Locality

##### B4.22 Preservation of Trees and Bushland Vegetation

##### B8 Site Works Management

##### B8.6 Construction and Demolition - Traffic Management Plan

- Dilapidation Report
- Demolition and Construction Traffic Management Plan
- On Street Work Zones and Permits
- Kerbside Parking Restrictions
- Tower Crane

##### C1.1 Landscaping

##### C1.3 View Sharing

##### C1.4 Solar Access

##### C1.5 Visual Privacy

##### C1.6 Acoustic Privacy

##### D12 Palm Beach Locality

##### D12.1 Character as viewed from a public place

##### D12.2 Scenic Protection

D12.5 Front building line  
D12.6 Side and rear building line  
D12.8 Building envelope  
D12.10 Landscaped Area - Environmentally Sensitive Land  
D12.13 Construction, Retaining walls, terracing and undercroft areas  
D12.14 Scenic Protection Category One Areas

The non-compliance to the LEP and DCP outcomes and controls forms the basis of our objection.

Our loss of amenity will suffer from these non-compliances to outcomes and controls.

Our major concerns are:

1. the dwelling proposed is prohibited development in a RE1 Zone;
2. the non-compliant Building Height, Landscape Area, Front Building Line, Side and Rear Building Line and Building Envelope;
3. any adequate or proper consideration to consider a Construction Management Plan, including a Traffic Management Plan, including the consideration that 'On Street Work Zones and Permits' will not be allowed in the street, and 'Kerbside Parking Restrictions' would need to in place for the entire length of Mitchell Road. We are concerned that a Tower Crane will be used in air rights above our property and over The Bible Gardens. We ask Council to ensure that the Applicant presents a detailed Construction Management Plan, to fully articulate these matters prior to Consent, and that these documents form part of any future consent.

We are concerned that the proposed development will take away our amenity during the demolition and construction phase due to the incomplete consideration of these matters.

The proposed development will remove views, particularly from our main living deck looking down towards the beach/water interface, to the views to the north-east, and the public views from the Bible Gardens. We are concerned to privacy and solar loss implications caused directly from the non-compliant envelope.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant including:

1. Submit a detailed Demolition & Construction Management Plan, based upon no on-street work zones and permits, kerbside parking restrictions to entire length of Mitchell Road, removal of the tower crane, agreement to a very detailed written and photographic dilapidation report on our property and surrounding properties
2. Remove all built form from the Zone RE1 Public Recreation, revert to soft landscaping only
3. Decrease building footprint to ensure a 60% site coverage of soft open space to accord strictly with DCP D12.10

4. Reduce Building Heights to be strictly under 8.5m to LEP definition
5. Front and Rear Setbacks to be fully compliant to 6.5m controls with deep soil planting to screen proposed development, but only to the proposed wall height, and to have ongoing conditions to maintain wall height planting by bi-annual pruning
6. Side Building line & Building Envelope to be fully compliant with deep soil planting to screen proposed development, but only to the proposed wall height, and to have ongoing conditions to maintain wall height planting by bi-annual pruning

We agree with Roseth SC in NSWLEC Pafbum v North Sydney Council:

***“People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.”***

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that would not propose building on the Zone RE1 Public Recreation land

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that would be fully compliant development, that would not propose a dwelling on what is prohibited development on a RE1 zone, would present compliant Building Height, Landscape Area, Front Building Line, Side And Rear Building Line and Building Envelope and other non-compliances, to avoid leading to poor amenity outcomes.

The ‘*legitimate expectation*’ that we had as a neighbour was that we would not have to suffer any amenity loss from a non-compliant envelope.

The ‘*legitimate expectation*’ that we had as a neighbour was for a development that integrates with the landscape character of the locality, and an expectation that the proposal would support landscape planting of a size that is capable of softening the built form. Our expectation was that the proposed development would not propose tall new trees into our viewing corridor to the water or our solar access corridor.

The ‘*legitimate expectation*’ that we had as a neighbour was for the bulk and scale of the proposed development would be in accordance with the locality, and landscape that would enhance the built form through planting to mitigate the impacts of the building bulk and scale, particularly along the boundaries.

The ‘*legitimate expectation*’ that we had as a neighbour was for a detailed Construction Management Plan be submitted as part of the DA, to properly assess the development, particularly considering the limited site access, the absence of any on street parking, the tight turning circles, and the very difficult, and steep terrain.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the

application, the subject of this Submission does not succeed on merit and is not worthy of the granting of development consent.

We ask Council to refuse this DA as the proposed development does not comply with the *planning regime*, by multiple non-compliance to development standards, and this non-compliance leads directly to our amenity loss.

## SECTION 2: CHARACTERISTICS OF OUR PROPERTY

Our property shares a common boundary with the subject property.

The subject site lies to the east of our property.

We enjoy good levels of view sharing, privacy and daylight over the subject site.

Our property is shown on the attached map 'red starred'. The subject site is shown 'edged in red'.





### SECTION 3: SITE DESCRIPTION & LOCATION

The SEE states:

*The subject site is located on the northern side of Mitchell Road to the south of Florida Road. The site sits within an established low density residential area characterized by low density residential dwellings designed to respond to the topography and existing vegetation in the area.*

*The site directly adjoins and partially forms a part of the locally listed heritage item "The Bible Garden" at 6a Mitchell Road, Palm Beach as identified within the Pittwater Local Environmental Plan (LEP) 2014.*

*The site is commonly known as 6 Mitchell Road, Palm Beach and legally described as Lot 1, DP 1086858. The site comprises a battle-axe lot with an area of approximately 695.1m<sup>2</sup>. The site is accessed via a shared driveway from Mitchell Road to the south of the site.*

### SECTION 4: DESCRIPTION OF PROPOSED DEVELOPMENT

The SEE states:

*This application proposes the demolition of existing structures and construction of a four-storey dwelling and associated works at 6 Mitchell Road, Palm Beach. Specifically, the development will consist of:*

*The demolition of the existing dwelling and associated structures;*

*The removal of two existing trees;*

*The construction of a new four storey dwelling to comprise of:*

- *Four (4) bedrooms, study, living room, dining room, kitchen, laundry, family room and outdoor decks;*
- *A two car garage access from the existing shared driveway; and*
- *A plunge pool access on the ground floor of the dwelling.*

*The construction of a new balustrade for the bible garden to match the existing one and minor repair works to the existing bible garden paved areas that may be impacted during construction.*

*The provision of landscaping to include native species to ensure no environmental or amenity impacts on surrounding land uses. The proposed landscaping includes the provision of a landscape roof over the proposed garage to ensure no visual impacts on the adjoining Bible Garden.*

## **SECTION 5: OUTSTANDING INFORMATION**

### **Height Poles**

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks, Balustrades, Privacy Screens

The Applicant will have to identify what heights and dimensions are proposed as many are missing from the submitted DA drawings. There is no site set out dimensions on any plans.

### **Geotechnical Report**

We ask for the Geotechnical Report to be revised to give greater clarity on the items raised in this Submission.

1. The structural design is to be reviewed by a geotechnical engineer prior to the Construction Certificate (Council Policy Section 6.5(g)(ii)), provide conditions for ongoing management as per Section 6.5(g)(iv).
2. Temporary anchors be used in piling and that no permanent anchors are installed as they would then reduce the ability for development within the adjoining property.
3. Until subsurface investigations prove that good quality rock is present, assume that the rock will be of poor quality and shoring should be allowed for the full depth of the excavation.
4. Vibration monitoring should be carried out until it can be demonstrated that the transmitted vibrations to the adjoining properties are within tolerable limits. Vibration levels to reduce to 2.5mm/sec, with a stop work halt at 2.0mm/sec, with full-time monitoring, and daily reports to Certifier and Council
5. The dilapidation survey should comprise a detailed inspection of neighbours property both externally and internally with all defects rigorously described and photographed. The completed dilapidation report should be provided to the neighbour to allow then to confirm that the dilapidation report represents a fair record of actual conditions.

## **Misleading Drawings & Incomplete DA Drawings**

### **Landscape Area Calculations**

The Site Area is 695.1sqm. The Developer has not identified the 60% of the site to accord with the DCP 12.10 Landscape Area control. A zone of **417.06sqm** is required in strict accordance with the definition, and measured precisely to the DCP standard of minimum dimensions and depths.

### **Site Setout Drawing**

There is no plan set out of the proposed buildings. No dimensions from site boundaries, or dimensions of any level or plan.

### **Sections**

Sections noted on plans do not cross reference to other drawings, are not referenced the same

### **Survey Levels**

The Applicant has not adequately located the registered surveyor's levels on plans, sections or elevations, particularly along the boundary.

Our dwelling has not been recorded on the Applicant's survey drawing, in non-compliance with Council standards. This matter needs rectification.

We are greatly concerned that the Applicant has modified the Registered Surveyors Plan to misrepresent neighbours' dwellings. We ask Council to ensure that the Registered Surveyors drawing is shown precisely as drawn by the Registered Surveyor. The applicant's drawings have been altered in these respects so as not to clearly define external wall zones, decks, and eaves, and in doing so presents false and misleading drawings to Council. We ask that Council obtain amended plans to clearly define neighbour's dwellings precisely as the Registered Surveyor has presented them, to avoid proper consideration of the DA.

## **SECTION 6: STATUTORY PLANNING FRAMEWORK**

### **Pittwater Local Environmental Plan 2014**

#### **1.2 Aims of Plan**

We contend that the proposed development does not accord with the aims of the plan.

## 1.2 Aims of Plan

(1) This Plan aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(2) The particular aims of this Plan are as follows—

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

(a) to promote development in Pittwater that is economically, environmentally and socially sustainable,

(b) to ensure development is consistent with the desired character of Pittwater's localities,

(g) to protect and enhance Pittwater's natural environment and recreation areas,

(i) to minimise risks to the community in areas subject to environmental hazards including climate change,

(j) to protect and promote the health and well-being of current and future residents of Pittwater.

## Part 2 Permitted or prohibited development

We contend that the proposed development does not accord with

- Zone RE1 Public Recreation
- Zone E4 Environmental Living
- 88B Instrument – Terms of Easements and Restrictions

We ask Council to specifically consider the proposed dwelling within the RE1 Public Recreation zone, and consider the Terms of Easements and Restrictions.

### Zone Objectives – E4 Environmental Living

The objectives of the E4 zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and*
- *landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

### Comment

The proposed development is inconsistent with the relevant objectives of the zone in that it provides an inappropriate low density residential development that is not integrated with the landform and

landscape. It has not been designed to ensure it does not result in any impacts on the ecological, aesthetic or heritage values of the site or the wider locality.

The overdevelopment is best described by the extensive non-compliance to controls:

- Building Height 10.62m v 8.5m 25% non-compliance [73.60 roof v 62.98 survey]
- Landscape Area c.20% of site area proposed v 60% control 300% non-compliance
- Front Setback Zero v 6.5m >1000% non-compliance
- Rear Setback 1.2m v 6.5m >540% non-compliance
- Side Setback Fails 1m & 2.5m control

### **Zone Objectives – RE1 Public Recreation**

The objectives of the RE1 zone are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To allow development that does not substantially diminish public use of, or access to, public open space resources.*
- *To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.*

Comment

The proposed development is not consistent with the relevant objectives of the zone.

The DA description clearly is for a dwelling. The DA Application states:

*the demolition of existing structures and construction of a new four-storey dwelling and associated works at 6 Mitchell Road, Palm Beach.*

A major part of the dwelling is positioned within the RE1 Public Recreation zone.

This development within the RE1 zone, contributes to non-compliance in Building Height, Front Setback, and Landscape Area.

All the non-compliant development, that is built in the RE1 zone, is clearly visible within the Bible Gardens, and our property, and will clearly present as a roof to a dwelling from these zones, and from neighbouring properties.

The Council does not have the power to approve a dwelling within the RE1 zone, and the Developer's argument is fundamentally flawed.

We are dismayed to see that that none of the '*Alternatives*' that have been presented by the Developer, have ever been presented what a '*complaint development*' would look like.

It would appear that the Developer has crafted *alternative after alternative* of non-compliant design solutions, in an effort to distract the attention of the significant non-compliance, and of lack of permissibility, and to the very fact that a dwelling is being proposed in a RE1 zone. The Developer calls the development a 'road' when indeed it is a garage and entry structure for a dwelling.

The obvious design solution would be to fully protect the RE1 Zone for deep soil planting, and to consider a design concept that creates the least amount of impact between the Bible Gardens and the elevated road structure, not create the maximum amount of impact as this proposed development attempts to do.

To that end, *a more skilful design*, would be a concept of creating a simple hard stand for two car spaces, surrounded by landscaping, this is the obvious design solution.

A path could lead from this hard stand, under the existing elevated structure, to a zone where the new stair and new lift could be located under the existing elevated road structure. This would create 'no new built form' to the RE1 Zone, a more compliant front setback, and indeed maintain the views from the Bible Gardens and neighbouring properties.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

### **4.3 Height of Buildings**

*(1) The objectives of this clause are as follows:*

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Building Height is 10.62m at the proposed Roof at RL 73.60.

This garage and entry structure is clearly in the front setback zone, built on the boundary or even over the boundary on Council land, and part of this area is in the R2 Zone.

The 25% non-compliance to building Height is unreasonable and acceptable, adjacent to the sensitive heritage item.

The 10.6m height does not ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality, does not ensure that buildings are compatible with the height and scale of surrounding and nearby development, does not minimise any overshadowing of neighbouring properties, does not allow for the reasonable sharing of views, does not encourage buildings that are designed to respond sensitively to the natural topography, and does not minimise the adverse visual impact of development on the natural environment, and heritage items.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

#### **4.6 Exceptions to development standards**

No 4.6 Request has been submitted, and therefore Council cannot grant consent under 4.6 [3].

Any 4.6 request must ultimately fail, as clearly the poor amenity outcomes could not be considered reasonable or necessary. Council could not be convinced that the Developer could achieve these outcomes:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- that there are sufficient environmental planning grounds to justify contravening the development standard.
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

The height and scale of the building is not consistent with the desired character of the locality, is not consistent with the existing site context.

There are adverse shadow and amenity impacts on surrounding development caused by this excessive height, and the excessive height does not allow for appropriate view sharing, and fails to respond to the natural topography of the site and surrounding area. The excessive height in the front setback zone, immediately adjacent the heritage item, poorly impacts the heritage items.

A more compliant 6.5m front setback and a height below 8.5m would have a significantly improved outcome.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

### **5.10 Heritage conservation**

The excessive height in the front setback zone, and the 'zero' or 'nil' front setback, immediately adjacent the heritage item, poorly impacts the heritage items.

A more compliant 6.5m front setback and a height below 8.5m would have a significantly improved outcome.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

## **Pittwater 21 Development Control Plan**

### **A1.7 Considerations before consent is granted**

We contend that this Submission clearly shows that the consideration under this clause cannot be achieved by Council, due to multiple non-compliances, and prohibited development concerns. The clause states:

*Before granting development consent, Council must be satisfied that the development is consistent with:*

*Pittwater Local Environmental Plan 2014; and  
the desired character of the Locality; and  
the development controls applicable to the development.*

*Council will also have regard to the matters for consideration under section 4.15 Evaluation of the Environmental Planning and Assessment Act 1979.*

*Before granting consent for development within a Locality, Council may consider the provisions of a neighbouring Locality to the extent to which it affects the subject site.*



#### **A4.12 Palm Beach Locality**

We contend that the proposed development, built in RE1 Zone, with zero front setbacks, and excessive building heights, and non-complaint landscaped areas does not correspond with the desired character of Palm Beach. The clause states:

##### *Desired Character*

*The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

#### **B8 Site Works Management**

We are very concerned to the excessive excavation and does not achieve the outcomes in Clause B8.1

##### *Outcomes*

*Site disturbance is minimised. (En)*

*Excavation, landfill and construction not to have an adverse impact. (En)*

*Excavation and landfill operations not to cause damage on the development or adjoining property. (S)*

#### **B8.6 Construction and Demolition - Traffic Management Plan**

We are very concerned that the developer has not provided any detail to these matters.

The site is a battle axe block with a small site frontage, in a very tight road network.

We ask Council to ensure the following documents are submitted prior to determination, and these matters addressed by the Council Officers, rather than leave the matters in the hands of a Private Certifier:

- Demolition and Construction Traffic Management Plan
- No 'On Street' Work Zones and Permits
- No Kerbside Parking Restrictions
- No Tower Crane, use temporary mobile crange as required.

### *Outcomes*

*Minimal disturbance to the residential community. (S)*

*Protection of Roads. (S, Ec)*

### *Controls*

*For all development where either excavated materials to be transported from the site or the importation of fill material to the site is 100m<sup>3</sup> or greater, a Construction Traffic Management Plan indicating truck movements, and truck routes is to be provided and approved by Council prior to the commencement of works.*

*All transport works must not cause adverse disruption or nuisance to adjoining residences, businesses or the street system.*

## **C1.1 Landscaping**

We contend that the proposed development does not accord with this Clause.

We are concerned that the proposed development is proposing landscaping that:

- does not calculate to 60% of the site area;
- does not soften the built form;
- is positioned within our viewing corridors and our 9am winter solar access corridors;

### **Outcomes**

*A built form softened and complemented by landscaping. (En)*

*Landscaping reflects the scale and form of development. (En)*

*Retention of canopy trees by encouraging the use of pier and beam footings. (En)*

*Development results in retention of existing native vegetation. (En)*

*Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)*

*Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)*

*Landscaping enhances habitat and amenity value. (En, S)*

*Landscaping results in reduced risk of landslip. (En, Ec)*

*Landscaping results in low watering requirement. (En)*

### **Controls**

*All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. Species selection and area of landscape to be locally native species is determined by extent of existing native vegetation and presence of an Endangered Ecological Community. Note if the land is within an Endangered Ecological Community there will be a Development Control specifically covering the requirements for Landscaping in an Endangered Ecological Community.*

*In all development a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form.*

*At least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site. Where there are existing canopy trees, but no natural tree regeneration, tree species are to be planted to ensure that the canopy is retained over the long-term. Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form.*

*Each tree planted is to have a minimum area of 3 metres x 3 metres and a minimum 8m<sup>3</sup> within this area to ensure growth is not restricted.*

*The following soil depths are required in order to be counted as landscaping:*

- *300mm for lawn*
- *600mm for shrubs*
- *1metre for trees*

*The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:*

- *A planter or landscaped area with minimum dimensions of 4m<sup>2</sup> for shop top housing developments,*
- *60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy, and*
- *50% for all other forms of residential development.*

*Screening shall be of vegetation (not built items), and shall be calculated when viewed directly onto the site.*

*In bushfire prone areas, species shall be appropriate to the bushfire hazard.*

*Landscaping shall not unreasonably obstruct driver and pedestrian visibility.*

*Development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops.*

*Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.*

*Noxious and undesirable plants must be removed from the site*

*([www.pittwater.nsw.gov.au/environment/noxious\\_weeds/a-z\\_list\\_of\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds/a-z_list_of_weeds))*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

### **C1.3 View Sharing**

The proposed development does not satisfy view loss consideration under the controls.

No adequate View Loss Analysis has been prepared by the Applicant.

There is no reasonable sharing of views amongst dwellings.

We are concerned over the loss of views from the Bible Gardens from proposed development in the front setback zone, prohibited development in the RE1 zone, and non-compliant building height by over 25%.

The new development is not designed to achieve a reasonable sharing of views available from surrounding and nearby properties.

The proposal has not demonstrated that view sharing is achieved through the application of the Land and Environment Court's planning principles for view sharing.

Our comments are as follows.

**In Tenacity, [Tenacity Consulting v Warringah Council 2004]**, NSW LEC considered Views. Tenacity suggest that Council should consider:

*“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.”*

The development breaches multiple planning controls and is unreasonable.

The impact on views arises as a result of non-compliance with one or more planning controls, and the moderate to devastating impact is considered unreasonable.

#### **Application of Tenacity planning principle**

We are concerned that no adequate consideration of view impact from our property.

The views lost are views to the water

A preliminary analysis and assessment in relation to the planning principle of Roseth SC of the Land and Environment Court of New South Wales in *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)* is made, however we have no confidence that the assessment is accurate due to the absence of height poles.

We request that height poles are positioned for the proposed dwelling at all levels.

The steps in *Tenacity* are sequential and conditional in some cases, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold is not met.

### **Step 1 Views to be affected**

The first step quoted from the judgement in *Tenacity* is as follows:

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

Prior to undertaking Step 1 however, an initial threshold in *Tenacity* is whether a proposed development takes away part of the view and enjoys it for its own benefit and would therefore seek to share the view. In our opinion the threshold test to proceed to Step 1, we provide the following analysis;

An arc of view is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property. Our large living, dining, and kitchen all face the view.

The composition of the arc is constrained either side of the subject site, by built forms and landscape.

The central part of the composition includes the subject site.

Views include scenic and valued features as defined in *Tenacity*.

The proposed development will take away views for its own benefit.

The view from our living zones and decks towards the water view, and the land-water interface.

The existing view is a 'moving landscape', rather than just a 'scenic outlook', given the activity on the water. The extent of view loss is moderate and the features lost are considered to be valued as identified in Step 1 of *Tenacity*.

### **Step 2: From where are views available?**

This step considers from where the affected views are available in relation to the orientation of the building to its land and to the view in question. The second step, quoted, is as follows:

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

The views in all cases are available across the boundary of the subject site from standing [1.4m] and seated [1.2m] positions.

An arc of view is available when standing at a central location on the elevated decks, living spaces, and other highly used zones on our property. Our combined living area, dining area, kitchen and outdoor living room is on the first floor, contrary to the applicant's statements. In this respect we make two points:

- We have no readily obtainable mechanism to reinstate the impacted views from our living zones if the development as proposed proceeds; and
- All of the properties in the locality rely on views over adjacent buildings for their outlook, aspect and views towards the water view

We attach a series of photographs from our highly used Living Room and Entertainment Decks.

We contend that the proposed development must be reduced in massing so as to maintain our view of the water.

### **Step 3: Extent of impact**

The next step in the principle is to assess the extent of impact, considering the whole of the property and the locations from which the view loss occurs.

Step 3 as quoted is:

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Step 3 also contains a threshold test. If the extent of impact is negligible or minor for example, there may be no justification for proceeding to Step 4, because the threshold for proceeding to considering the reasonableness of the proposed development may not be met. In that case the reasonableness question in Step 4 does not need to be asked and the planning principle has no more work to do.

We consider the extent of view loss in relation to our living room zones to be **moderate** using the qualitative scale adopted in *Tenacity*.

The view lost includes water views and land-water interface. As we rate the extent of view loss as moderate in our opinion the threshold to proceed to Step 4 of *Tenacity* is met.

#### Step 4: Reasonableness

The planning principle states that consideration should be given to the causes of the visual impact and whether they are reasonable in the circumstances.

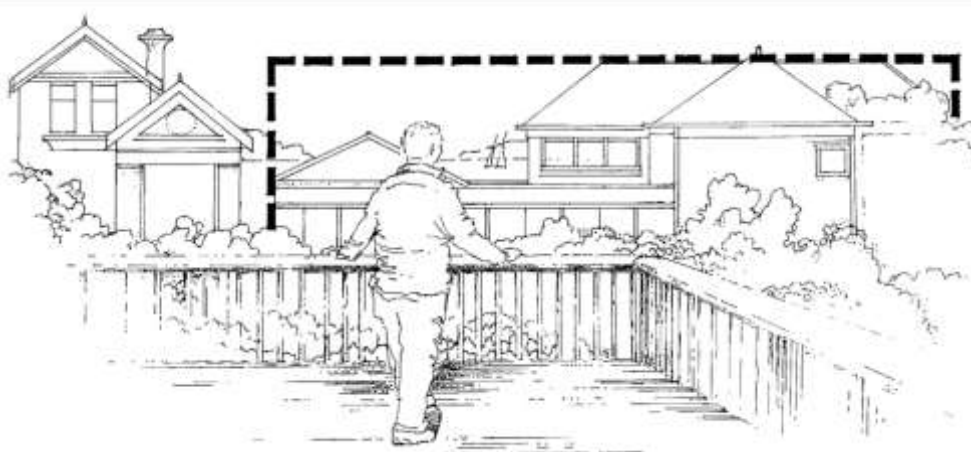
Step 4 is quoted below:

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

As the proposed development does not comply with outcomes and controls, that are the most relevant to visual impacts, greater weight would be attributed to the effects caused.

In our opinion the extent of view loss considered to be **moderate**, in relation to the views from our living rooms and living room deck of our dwelling. The view is from a location from which it would be reasonable to expect that the existing view, particularly of the water could be retained especially in the context of a development that does not comply with outcomes and controls.

Once Templates are erected, we can provide additional commentary.



*Where there is a potential view loss, Council could require a maximum building height of less than 8m for part of the building.*

The private domain visual catchment is an arc which views will be affected as a result of the construction of the proposed development.

The proposed development will create view loss in relation to our property.

The views most affected are from living areas and associated terraces and include very high scenic and highly valued features as defined in Tenacity.

Having applied the tests in the Tenacity planning principle and without height poles erected, we conclude that we would be exposed to a moderate view loss.

The non-compliance with planning outcomes and controls of the proposed development causes this loss.

Having considered the visual effects of the proposed development envelope, the extent of view loss caused would be unreasonable and unacceptable.

As noted by his Honour, Justice Moore of the Court in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 (Rebel), “the concept of sharing of views does not mean, for the reasons earlier explained, the creation of expansive and attractive views for a new development at the expense of removal of portion of a pleasant outlook from an existing development. This cannot be regarded as “sharing” for the purposes of justifying the permitting of a non-compliant development when the impact of a compliant development would significantly moderate the impact on a potentially affected view”. The same unreasonable scenario in Rebel applies to the current DA. The proposed breaching dwelling will take away views from our property (and possibly other adjoining properties) to the considerable benefit of the future occupants of the proposed dwelling. This scenario is not consistent with the principle of View Sharing enunciated by his Honour, Justice Moore in Rebel. The adverse View Loss from our property is one of the negative environmental consequences of the proposed development

The proposed development cannot be supported on visual impacts grounds.

There is no reason why our view of the water cannot be maintained in full.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

### **Public Domain Views**

In *Rose Bay Marina Pty Limited v Woollahra Municipal Council & Anr* [2013] NSWLEC 1046 the Land and Environment Court established a ‘*planning principle*’ for public domain views.



We contend that the views lost by non-compliant building height, front setback, side setback, and built form in the RE1 Zone, warrants refusal under public domain views from the Bible Gardens.

The Bible Gardens is an iconic viewing platform for all residents of the Northern Beaches, and there is no reason, unique or otherwise, that non-compliant development should be allowed to remove any view, irrespective of the severity of the loss, from this heritage and iconic location.

The planning principle for public domain views adopted in *Rose Bay Marina* involves a two stage inquiry: the first factual, followed by a second, analytical.

#### *Stage 1 – Investigation*

The first stage involves several steps. Initially, the task is to identify the nature and scope of the existing views from the public domain, which should include considerations relating to:

- the nature and extent of any existing obstruction of the view;
- relevant elements of the view;
- what might not be in the view;
- whether the change permanent or temporary;
- what might be the curtilages of important elements within the view.

The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed.

The third step is to identify the extent of the obstruction at each relevant location. In this regard, the Court said that the impact on appreciation of a public domain view should not be subject to any eye height constraint.

The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development.

The final step is to inquire whether or not there is any document that identifies the importance of the view to be assessed (such as heritage recognition) or where the applicable planning regime promotes or specifically requires the retention or protection of public domain views. The Court made it clear, however, that the absence of such provisions does not exclude a broad public interest consideration of impacts on public domain views.

#### *Stage 2 – Analysis*

The second stage is the analysis of impacts. The Court said the analysis required of a particular development proposal's public domain view impact is both quantitative as well as qualitative, but '*this*

*is not a process of mathematical precision requiring an inevitable conclusion based on some fit in a matrix'.*

Planning controls or policies for the maintenance or protection of public domain views can create a presumption against the approval of a development with an adverse impact on a public domain view. This being so, the document must be properly considered and the legal status of the document is relevant in this regard.

In the absence of such planning controls or policies, the Court said *'the fundamental quantitative question is whether the view that will remain after the development (if permitted) is still sufficient to understand and appreciate the nature of and attractive or significant elements within the presently unobstructed or partially obstructed view.'* Interestingly in this regard, the Court said that sometimes it may be essential to preserve partially obstructed views from further obstruction whereas in other cases this may be *'mere tokenism'*.

The qualitative evaluation requires an assessment of the aesthetic and other elements of the view, and the outcome of this process *'will necessarily be subjective'*. The framework for how the assessment is undertaken must be clearly articulated including clearly setting out the factors/considerations to be taken into account and the weight attached to them.

The relevant factors articulated by the Court included the following:

- a high value is to be placed on *'iconic views'*
- a completely unobstructed view has value
- whether any significance attached to the view is likely to be altered, and if so, who or what organisation has attributed that significance and why they have done so
- whether the present view is regarded as desirable and whether the change makes it less so and why
- whether any change to whether the view is a static or dynamic one should be regarded as positive or negative and why
- if the view attracts the public to specific locations, why and how that attraction is likely to be impacted
- whether any present obstruction of the view is so extensive as to render preservation of the existing view merely tokenistic
- on the other hand, if the present obstruction of the view is extensive, whether the remainder warrants preservation
- does the insertion of some new element into the view by the proposed development alter the nature of the present view?

Finally, the Court said that *'a sufficiently adverse conclusion on the impact on views from the public domain may be determinative of an application. However, it may also be merely one of a number of factors in the broader assessment process for the proposal.'*

We contend that the extremely excessive overdevelopment of the site between the Bible Gardens and the existing road accessway that crosses the subject site is extremely unreasonable and unacceptable. This zone must be kept in a natural state with deep soil planting and no built form, with the minimum intrusion of a hard stand to support two car spaces.

We contend that the consideration under *Rose Bay Marina Pty Limited v Woollahra Municipal Council & Anr* [2013] NSWLEC 1046, can only find that the proposed overdevelopment in this zone is totally unreasonable, unacceptable and totally avoidable by a more sensitive *'more skilful design'*.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

### **Height Poles/ Templates**

We ask Council to request that the Applicant position 'Height Poles/Templates' to define the non-compliant building envelope, and to have these poles properly measured by the Applicant's Registered Surveyor.

The Height Poles will need to define:

- All Roof Forms, and all items on the roof
- Extent of all Decks
- Extent of Privacy Screens
- All proposed Trees & Landscape

There is no site dimensional layout of the proposed works, so the Applicant will need to fully document site dimensions prior to this exercise and submit that information to Council.

### **C1.4 Solar Access**

In the *Benevolent Society v Waverley Council* [2010] NSWLEC 1082 the LEC consolidated and revised planning principle on solar access is now in the following terms:

*“Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.”*

We contend that the overshadowing arises out of poor design. The design does not respect building height, and side envelope controls, and must be considered ‘poor design’.

The loss of sunlight is directly attributable to the non-compliant envelope.

The planning principle *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 is used to assess overshadowing for development application. An assessment against the planning principle is provided as followed:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

The density of the area is low density

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The solar diagrams are not complete, but what has been provided shows that the proposed development will overshadow the adjoining dwellings.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal’s design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

The proposed development has been designed without considering the amenity of the neighbouring properties. It is considered that a more skilful design, with a compliant envelope, could have been adopted that would have reduced the impact on the neighbouring properties. What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5o or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

What has been submitted gives the very clear indication that the outcome is not in accordance with controls

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

There is minor overshadowing as a result of vegetation

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

The area is not currently undergoing change.

The assessment of the development against the planning principle results in the development not complying with the solar access controls and therefore amended plans should be requested to reduce the overshadowing impact on the adjoining neighbour. It is suggested that a more skilful design of the development, with a compliant building height and complaint side boundary envelope would result in less impact in regard to solar access.

What has been submitted gives the very clear indication that the outcome is not in accordance with controls.

The loss of solar access at 9am is unreasonable, considering the multiple non-compliances to envelope controls.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

### **C1.5 Visual Privacy**

The dwelling's design does not adequately preserve the privacy of the neighbouring properties located to the side of the site.

There are a number of windows and decks that have a direct sight line to windows and decks on our property.

We are concerned to the glazed surfaces and decks facing our property.

We ask for 1.7m high with privacy screens added to all west facing windows and all decks.

An assessment of the privacy impact against the planning principle *Meriton v Sydney City Council* [2004] NSWLEC 313 follows:

*Principle 1: The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*

Response: The development is located in a low-density area.

*Principle 2: Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*

Response: The proposed development result in a privacy impact with the proposed windows facing neighbours without any screening devices being provided.

*Principle 3: The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*

Response: The windows in question are windows of the main circulation zones and living areas, it is considered that the living areas will result in an unacceptable privacy breach. The proposed windows facing the rear private open spaces for the neighbouring dwelling and will result in an unacceptable level of privacy impact.

*Principle 4: Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*

Response: The proposed development is a major new build development and the proposed windows have been designed without any consideration to the privacy of the neighbouring property.

*Principle 5: Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*

Response: It is considered that the private open space of the neighbouring dwellings could be protected through the provision of highlight windows and the provision of privacy screens.

*Principle 6: Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*

Response: As mentioned above, the use of highlight windows and privacy screens would reduce the impact of the dwelling.

*Principle 7: Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*

Response: The landscaping is the only method offered by the Applicant

*Principle 8: In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.*

Response: The area is not undergoing change that would warrant privacy impact such as the one presented.

Comment: As the development is considered to result in an unacceptable privacy impact due to the design, it is requested that the proposed development be redesigned to reduce amenity impact on the neighbouring properties.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

## **C1.6 Acoustic Privacy**

Noise is not to be offensive as defined by the *Protection of the Environment Operations Act 1997*, including noise from plant, equipment and communal or private open space areas (S)

Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Developments must comply in all respects with the *Protection of the Environment Operations Act 1997*, and other relevant legislation.

We are concerned regarding noise from AC plant, heating/cooling plant, and any pool plant

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

## D12 Palm Beach Locality

### D12.1 Character as viewed from a public place

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

The excessive height, lack of any front setback, garages built on RE1 zone land and in the front setback zone, and non-compliant landscape area all contribute to the lack of success addressing the outcomes and controls.

#### *Outcomes*

*To achieve the desired future character of the Locality.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)*

*To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.*

*The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

*High quality buildings designed and built for the natural context and any natural hazards. (En, S)*

*Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

*To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*

*To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)*

#### *Controls*

*Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.*

*Walls without articulation shall not have a length greater than 8 metres to any street frontage.*

*Any building facade to a public place must incorporate at least two of the following design features:*

*entry feature or portico;*

*awnings or other features over windows;*



*verandahs, balconies or window box treatment to any first floor element;  
recessing or projecting architectural elements;  
open, deep verandahs; or  
verandahs, pergolas or similar features above garage doors.*

*The bulk and scale of buildings must be minimised.*

*Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.*

*Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

*Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.*

*General service facilities must be located underground.*

*Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

## **D12.2 Scenic Protection**

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

The excessive height, lack of any front setback, garages built on RE1 zone land and in the front setback zone, and non-compliant landscape area all contribute to the lack of success addressing the outcomes and controls.

### *Outcomes*

*Achieve the desired future character of the Locality.*

*Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment. (En, S)*

### *Controls*

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

#### **D12.5 Front building line**

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

The excessive height, garages built on RE1 zone land and in the front setback zone, and non-compliant landscape area, coupled with the proposed ZERO front setback, all contribute to the lack of success addressing the outcomes and controls.

##### *Outcomes*

*Achieve the desired future character of the Locality.*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*The amenity of residential development adjoining a main road is maintained. (S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Vehicle manoeuvring in a forward direction is facilitated. (S)*

*To preserve and enhance the rural and bushland character of the locality. (En, S)*

*To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

*To encourage attractive street frontages and improve pedestrian amenity.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

##### *Controls*

*6.5m*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

#### **D12.6 Side and rear building line**

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

The excessive height, garages built on RE1 zone land and in the front setback zone, and non-compliant landscape area, ZERO front setback, and non-compliant side and rear building line all contribute to the lack of success addressing the outcomes and controls.

### **Outcomes**

*To achieve the desired future character of the Locality. (S)*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

*Flexibility in the siting of buildings and access. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*To ensure a landscaped buffer between commercial and residential zones is established.*

### **Controls**

*The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table:*

- *2.5 to at least one side;*
- *1.0 for other side*
- *6.5m (rear)*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

## **D12.8 Building envelope**

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

The excessive height, garages built on RE1 zone land and in the front setback zone, and non-compliant landscape area, zero front setback, non-compliant side and rear building line, and the non-compliance to the building envelope all contribute to the lack of success addressing the outcomes and controls.

### **Outcomes**

*To achieve the desired future character of the Locality. (S)*

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of*

*the existing natural environment.*

*The bulk and scale of the built form is minimised. (En, S)*

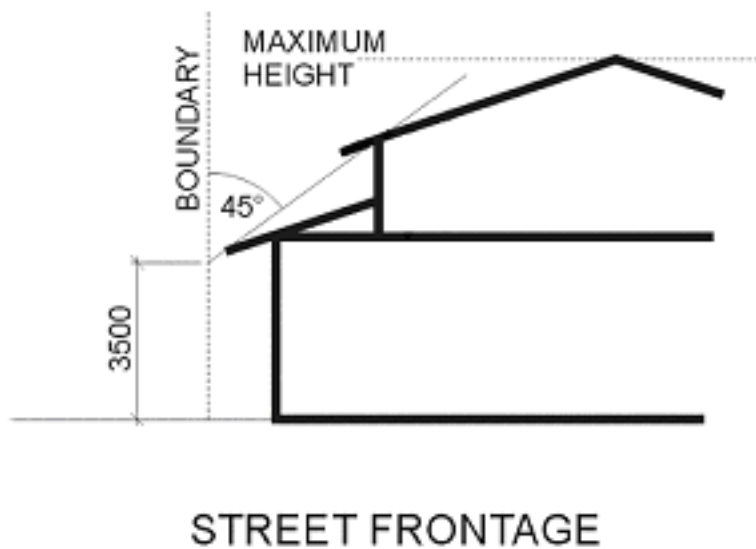
*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

**Controls**

*Buildings are to be sited within the following envelope:*



The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

#### **D12.10 Landscaped Area - Environmentally Sensitive Land**

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

The non-compliant landscape area is a major concern.

The total landscaped area on land zoned R2 Low Density Residential or E4 Environmental Living shall be 60% of the site area. The provision, with compliance to correct measurement and calculation, would result in a major non-compliance to this main density control.

Outcomes and Controls are simply not achieved.

**Outcomes**

*Achieve the desired future character of the Locality. (S)*  
*The bulk and scale of the built form is minimised. (En, S)*  
*A reasonable level of amenity and solar access is provided and maintained. (En, S)*  
*Vegetation is retained and enhanced to visually reduce the built form. (En)*  
*Conservation of natural vegetation and biodiversity. (En)*  
*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*  
*To preserve and enhance the rural and bushland character of the area. (En, S)*  
*Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.(En, S)*

### **Controls**

*The total landscaped area on land zoned R2 Low Density Residential or E4 Environmental Living shall be 60% of the site area.*

*The use of porous materials and finishes is encouraged where appropriate.*

### **D12.13 Construction, Retaining walls, terracing and undercroft areas**

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

#### **Outcomes**

*To achieve the desired future character of the Locality.*  
*To protect and minimise disturbance to natural landforms.*  
*To encourage building design to respond sensitively to natural topography*

#### **Controls**

*Lightweight construction and pier and beam footings should be used in environmentally sensitive areas.*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

### **D12.14 Scenic Protection Category One Areas**

We contend that the proposed development does not achieve the outcomes or the controls to accord with this clause.

#### **Outcomes**

*To achieve the desired future character of the Locality.*

*To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.(En,S).*

*Maintenance and enhancement of the tree canopy.(En,S)*

*Colours and materials recede into a well vegetated natural environment.(En,S)*

*To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component (En, S)*

*To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.*

*Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.*

### **Controls**

*Screen planting shall be located between structures and boundaries facing waterways.*

*Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.*

*Development is to minimise the impact on existing significant vegetation.*

*The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.*

*The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.*

*The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.*

*The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.*

*Applicants are to demonstrate that proposed colours and materials will be dark and earthy.*

The above non-compliance will give rise to unreasonable amenity impacts upon the adjoining properties. In this instance, the proposal is not considered to achieve compliance with this control. These issues warrant refusal of the application.

## NSW LEC PLANNING PRINCIPLES

We bring to the attention of Council numerous **NSW LEC Planning Principles** that have relevance to this DA.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

### **Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Davies, [Davies v Penrith City Council 2013]**, NSW LEC considered General Impact. Davies suggest that Council should consider:

*“Would it require the loss of reasonable development potential to avoid the impact?”*

*Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?”*

*Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?”*

### **Commentary:**

The proposals do not comply with planning controls, and the impact is due to the non-complying element of the proposal.

In **Veloshin, [Veloshin v Randwick Council 2007]**, NSW LEC considered Height, Bulk & Scale. Veloshin suggest that Council should consider:

*“Are the impacts consistent with impacts that may be reasonably expected under the controls? For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.”*

### **Commentary:**

The impacts are not consistent with the impacts that would be reasonably expected under the controls.

In **Project Venture Developments v Pittwater Council (2005) NSW LEC 191**, NSW LEC considered character:

*“whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment”*

Commentary:

The non-compliant elements of the proposed development, particularly caused from the non-compliant height, all setbacks, landscape area, and RE1 issues, would have most observers finding *‘the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site’s visual catchment’*

,

## **SECTION 4.14 [1] OF EPAA 1979**

### **Environmental Planning and Assessment Regulation 2000**

Applicable regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia and *Home Building Act 1989*, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection may be addressed by appropriate consent conditions in the event of an approval.

### **Likely Impacts of the Development**

This assessment has found that the proposal will have a detrimental impact on the natural and built environments pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.

### **Suitability of the Site**

The site is not suitable for the proposal pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.

### **Public Interest**

The proposal is not in the public interest because it results in a development of excessive bulk and scale which has adverse amenity impacts on adjoining properties and the broader locality.



## **SECTION 7: AMENDED PLANS**

We ask that Council request that the Applicant submit Amended Plans to resolve these matters in full, prior to determination.

These conditions would preferably all be dealt with under resubmission of Amended Plans, or by a withdrawal of this DA and a submission of a new DA.

We present them for Council's consideration. We do hope that Council will advise the Applicant that unless an amended plan submission is promptly forwarded, that refusal may be the outcome.

In this Written Submission we ask Council to request the Applicant to submit Amended Plans to bring the proposed development back into a more generally compliant envelope including:

1. Submit a detailed Demolition & Construction Management Plan, based upon no on-street work zones and permits, kerbside parking restrictions to entire length of Mitchell Road, removal of the tower crane, and full agreement to a very detailed written and photographic dilapidation report on our property and surrounding properties
2. Remove all built form from the Zone RE1 Public Recreation, revert to soft landscaping only
3. Decrease building footprint to ensure a 60% site coverage of soft open space to accord strictly with DCP D12.10
4. Reduce Building Heights to be strictly under 8.5m to LEP definition
5. Front and Rear Setbacks to be fully compliant to 6.5m controls with deep soil planting to screen proposed development, but only to the proposed wall height, and to have ongoing conditions to maintain wall height planting by bi-annual pruning
6. Side Building line & Building Envelope to be fully compliant with deep soil planting to screen proposed development, but only to the proposed wall height, and to have ongoing conditions to maintain wall height planting by bi-annual pruning

## **SECTION 8 CONCLUSION**

The proposal is not in conformity with the aims and implicit objectives of the LEP and DCP and the subordinate standards and controls applicable to this form of development on this particular site.

The proposed height and density are not as anticipated for this form of development with the building form ensuring that it will be discernible as viewed from the street and not complimentary and not compatible with its context.

The proposed development does not satisfy the the statutory regime applicable to the application and does not demonstrates that the proposed land use provides for an outcome that is consistent with the aims and objectives of the applicable LEP and DCP.

The outcome is a building that causes poor amenity outcomes and other amenity loss concerns due to non-compliance to multiple residential outcomes and controls.

The development does not satisfy the objectives of the standard and will present poor residential amenity consequences and does not maintain appropriate levels of amenity to the adjoining and nearby residential properties.

The identified non-compliances have not been appropriately justified having regard to the associated objectives, outcomes and controls.

The subject site is of a large size, and there is no reason, unique or otherwise, why a fully compliant solution cannot be designed on the site, to avoid amenity loss.

The proposed development is inconsistent with the conclusions reached by the Senior Commissioner in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191. We contest that most observers would find the proposed development offensive, jarring or unsympathetic to the streetscapes or having regard to the built form characteristics of development within immediate proximity of the site.

Having given due consideration to the relevant considerations pursuant to 4.15 of the Environmental Planning & Assessment Act 1979 (as amended) it has not been demonstrated that the proposed development is appropriate for approval.

This application results in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

In consideration of the proposal and the merit consideration of the development, the proposal is not considered to be consistent with the objectives, outcomes and controls of the LEP and DCP.

The resultant development is not considered to be an appropriate outcome for the site as it fails the balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

The processes and assessments have not been satisfactorily addressed.

The proposal does not succeed when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application is inappropriate on merit and is not worthy of the granting of development consent for the following reasons:

- The application has not been adequately considered and does not satisfy the various relevant planning controls applicable to the site and the proposed development.
- The proposed development is not consistent with the desired future character of the locality.

- The proposed development will have an unsatisfactory impact on the environmental quality of the land and the amenity of surrounding properties.
- The site is assessed as unsuitable for the proposal, having regard to the relevant considerations pursuant to the LEP & DCP

In assessing the impact of a development proposal upon a neighbouring property, what was said by Roseth SC in *Pafbum v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), at [19]-[24], is extremely helpful:

*19 Several judgments of this Court have dealt with the principles to be applied to the assessment of impacts on neighbouring properties. Tenacity Consulting v Warringah [2004] NSWLEC 140 dealt with the assessment of views loss; Parsonage v Ku-ring-gai Council [2004] NSWLEC 347 dealt with the assessment of overshadowing; while Meriton v Sydney City Council [2004] NSWLEC 313 and Super Studio v Waverley Council [2004] NSWLEC 91 dealt with the assessment of overlooking.*

*20 Five common themes run through the above principles. The first theme is that change in impact may be as important as the magnitude of impact.*

*21 The second theme is that in assessing an impact, one should balance the magnitude of the impact with the necessity and reasonableness of the proposal that creates it.*

*22 The third theme is that in assessing an impact one should take into consideration the vulnerability of the property receiving the impact.*

*23 The fourth theme is that the skill with which a proposal has been designed is relevant to the assessments of its impacts. Even a small impact should be avoided if a more skilful design can reduce or eliminate it.*

*24 The fifth theme is that an impact that arises from a proposal that fails to comply with planning controls is much harder to justify than one that arises from a complying proposal. People affected by a proposal have a legitimate expectation that the development on adjoining properties will comply with the planning regime.*

In the case of the present development proposal:

1. the magnitude of impact upon the amenity, use and enjoyment by us of our property is certainly not insignificant, in that:
  - the view loss, solar loss, visual and acoustic privacy, and visual bulk impacts from the proposed development into our property well above controls,
  - The extent of the proposed building envelopes

- The siting and extent of the proposed dwelling without having sufficient consideration for maintaining amenity, with non-complaint height, 60% landscape area, and front, rear and side setbacks taking amenity from neighbours
2. our property is vulnerable, being directly adjacent to the subject site;
  3. the lack of attention in the design of the development proposal as regards the impacts of the proposed development on our property in terms of height, bulk, visual privacy, acoustic privacy, visual bulk, and loss of morning winter sun, is relevant to the assessments of those impacts, such that even a small impact should be avoided if a more skilful design can reduce or eliminate it;
  4. the fact that the proposal fails to comply with a number of important planning controls is much more difficult to justify than would otherwise be the case with a complying proposal; and
  5. the proposal involves non-compliance with a number of principal planning control and this is an indicator of overdevelopment of the site.

In summary, we have, as Roseth SC pointed out in Pafbum, a legitimate expectation that the development to take place on the subject property '*will comply with the planning regime*' in the present circumstances.

We contend that the Development Application should be REFUSED on the following grounds.

A. Council cannot be satisfied that non-compliance to Building Height is adequately addressed within the SEE and fails to demonstrate that:

- compliance with the development standard is reasonable or necessary in the circumstances of the case;
- there are insufficient environmental planning grounds to justify contravening the development standard.
- the failure to submit an applicant's written request adequately addressing the non-compliant building height;
- the proposed development is not in the public interest because it is inconsistent with the objectives of the particular standard and the objectives for development within RE1 & E4 Zones

B. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the LEP:

Pittwater Local Environmental Plan 2014

## 1.2 Aims of Plan

### Part 2 Permitted or prohibited development

- Zone RE1 Public Recreation
- Zone E4 Environmental Living
- 88B Instrument – Terms of Easements and Restrictions

### 4.3 Height of buildings

### 4.6 Exceptions to development standards

### 5.10 Heritage conservation

C. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the DCP

## Pittwater 21 Development Control Plan

### A1.7 Considerations before consent is granted

#### A4.12 Palm Beach Locality

#### B4.22 Preservation of Trees and Bushland Vegetation

#### B8 Site Works Management

#### B8.6 Construction and Demolition - Traffic Management Plan

- Dilapidation Report
- Demolition and Construction Traffic Management Plan
- On Street Work Zones and Permits
- Kerbside Parking Restrictions
- Tower Crane

#### C1.1 Landscaping

#### C1.2 Safety and Security

#### C1.3 View Sharing

#### C1.4 Solar Access

#### C1.5 Visual Privacy

#### C1.6 Acoustic Privacy

#### D12 Palm Beach Locality

##### D12.1 Character as viewed from a public place

##### D12.2 Scenic Protection

##### D12.5 Front building line

##### D12.6 Side and rear building line

##### D12.8 Building envelope

##### D12.10 Landscaped Area - Environmentally Sensitive Land

##### D12.13 Construction, Retaining walls, terracing and undercroft areas

##### D12.14 Scenic Protection Category One Areas

D. Incomplete dimensional set out of the proposed development from site boundaries. Drawing inaccuracy. Lack of survey levels shown on DA drawings, and incomplete survey of neighbouring sites.

E. The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b), (c), (d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.

F. The proposal is contrary to Section **4.15(1)(b)** of the *Environmental Planning and Assessment Act 1979* in that it will have an adverse impact on the natural and built environments in the locality.

G. The proposals are unsuitably located on the site pursuant to Section **4.15(1)(c)** of the *Environmental Planning and Assessment Act 1979*.

H. The proposal is contrary to the public interest pursuant to Section **4.15(1)(e)** of the *Environmental Planning and Assessment Act 1979*.

J. The proposed dwelling in the RE1 Zone is not permissible

The DA scheme submitted requires to be amended, and we ask Council to request that the Applicant submit Amended Plans to overcome the issues raised in this objection.

If the Applicant does not undertake a resubmission of Amended Plans to deal with the matters raised in this objection, then we ask Council to simply issue a refusal.

We will welcome the opportunity to further expand on any of the issues once Amended Plans are submitted, identified within this Submission.

If this does not occur the Development Application should be **REFUSED** by Council.

Yours faithfully,

**David Andrew Thomas & Elizabeth Helen Thomas**  
5 Mitchell Road  
Palm Beach  
NSW 2108

Appendix: attached

## Appendix

We ask Council to ensure that all appropriate conditions are considered to any consent, including but not limited to, the following:

### Conditions of Consent

- Compliance with other Departments, Authority or Service Requirement
- Prescribed Conditions
- General Requirements

### Approved Land Use

- *Nothing in this consent shall authorise the use of the site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, as defined within the LEP. Any variation to the approved land use and/occupancy beyond the scope of the above definition will require the submission to Council of a new DA.*

### Conditions to be satisfied prior to the issue of the CC

- Amendments to the approved plans [*\*see attached list in body of written submission*]
- Footpath Design
- Accessibility pathway/access gradients
- Boundary Fences to be installed prior to excavation.
- All windows and doors facing neighbours to have 1.7m high sills, with obscured glazing
- All privacy screens to all decks shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
- Pre-commencement Dilapidation Report
- Compliance with standards [demolition]
- Compliance with standards
- Boundary Identification Survey
- Structural Adequacy & Excavation Work
- Geotechnical Report Recommendations to be incorporated into designs and structural plans
- Engineering Assessment
- Engineers Certification of Plans, including all retaining walls
- Tanking of Basement Level
- Installation & Maintenance of Sediment & Erosion Control
- Sub-Soil Seepage
- Demolition Traffic Management Plan
- Construction Traffic Management Plan
- Waste Management Plan
- Waste & Recycling Requirements

- Soil and Water Management Program
- Submission Roads Act Application for Civil Works in the Public Road
- Vehicle Access & Parking
- Visitor parking spaces located behind roller door
- Vehicle Crossing Application
- Pedestrian sight distance at property boundary
- Location of security gate and intercom system
- Minimum driveway width
- Access driveway
- On-site Stormwater Detention Details
- Stormwater Disposal
- Sydney Water
- Water Quality Management
- External finishes to Roof
- Colours & Materials
- On Slab Landscape Planting
- Landscaping
- New Landscaping Plan
- Project Arborist
- Tree Protection
- Tree Trunk, Root and Branch Protection
- Root Mapping
- Tree Removal within the Road Reserve
- Mechanical plant location
- AC Condenser Units
- No excavation within 3m of boundary
- Protection of Neighbours assets
- Pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary
- Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open.
- Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.

#### **Conditions that must be addressed prior to any commencement**

- Pre-Construction Dilapidation Report
- Installation and maintenance of sediment and erosion control
- Public Liability Insurance - Works on Public Land
- Pedestrian Sight Distance at Property Boundary



- Demolition and Construction Traffic Management Plan
- On Street Work Zones and Permits
- Kerbside Parking Restrictions
- Project Arborist
- Tree Removal
- Tree Removal in the road reserve
- Tree Trunk, Branch, and Root Protection
- Tree protection
- Tree and vegetation removal from property
- Compliance with Ecologist's Recommendations
- No Clearing of Vegetation
- Installation of Nest Boxes
- Temporary Protection Fencing

#### **Conditions to be complied with during demolition and building works**

- Road Reserve
- Removing, handling and disposing of asbestos
- Demolition works – Asbestos
- Property Boundary levels
- Survey Certificate
- Implementation of Demolition Traffic Management Plan
- Implementation of Construction Traffic Management Plan
- Traffic Control during Road Works
- Vehicle Crossings
- Footpath Construction
- Progress Certificate [Road & Subdivision]
- Civil Works Supervision
- Footpath Construction
- Notification of Inspections
- Geotechnical issues
- Detailed Site Investigation, Remedial Action Plan & Validation
- Installation and maintenance of sediment controls
- Building materials
- Rock Breaking
- Protection of adjoining property
- Vibration to reduce to 2.0mm/sec
- No excavation within 3m of boundary
- Waste Management during development
- Waste/Recycling Requirements
- Requirement to notify about new acid sulphate soils evidence

- Dewatering
- Tree Protection – Arborist Supervision of Works
- Tree and vegetation protection
- Tree Condition
- Native vegetation protection
- Protection of rock and sites of significance
- Aboriginal heritage
- Protection of Sites of Significance
- Notification of Inspections

#### **Conditions which must be complied with prior to the issue of the OC**

- Post Construction Dilapidation Report
- Certification of Structures
- Geotechnical Certificate
- Environmental Reports Certification
- Landscape Completion Certification
- Certification of Civil Works & Works as executed data on council land
- Fire Safety Matters
- Retaining Wall
- Waste/Recycling Compliance Documentation
- Positive Covenant for Waste Services
- Authorisation of Legal Documentation Required for Waste Services
- Required Planting
- Landscaping – swimming pools
- Positive Covenant and Restriction as to User for On-site stormwater disposal structures
- Positive Covenant for the maintenance of stormwater pump out facilities
- Reinstating the damaged road reserve during construction
- Reinstatement of Kerb
- Footpath
- Removal of redundant driveways
- Public Domain infrastructure
- Condition of retained vegetation
- Stormwater disposal
- Works as executed drawings - stormwater
- Installation of solid fuel burning heaters: No approval is granted for the installation of a solid/fuel burning heater. Certification of solid fuel burning heaters
- Required Tree Planting
- Required Planting
- Acoustic treatment of pool filter
- Noise Nuisance from plant
- Lighting Nuisance
- Swimming pool requirements

- Garbage and Recycling Facilities
- House number Building Number
- Unit numbering
- Waste Management Confirmation
- Privacy Screens
- Reinstatement of Kerbs
- Removal of all temporary structures/material and construction rubbish
- Sydney Water
- Control of noise, odour and vibrations from equipment within plant rooms and ventilation systems connected with the building to ensure noise and vibration from this equipment does not impact on the health and well-being of persons living within the complex and other surrounding premises.
- Plant room and equipment for operational conditions - Noise and vibrations. Noise from all plant rooms including roof top mechanical plant room, mechanical ventilation for car parks, extraction units and exhaust fans, air condition units and any motors of other equipment associated with the building must not generate noise above 5dBA at the property boundary and not be audible within habitable rooms of units within complex and surrounding premises including when doors and windows to those rooms are open. Above equipment must not create vibrations that can be detected within habitable rooms of units within complex and surrounding premises.
- Mechanical Ventilation certification: Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668: the use of mechanical ventilation.
- Protection of Habitat Features
- No Weeds imported on to the Site

#### **Ongoing Conditions that must be complied with at all times**

- Approved Land Use
- Waste Storage Area
- Height of vegetation
- Accessibility of parking facilities
- Parking Enclosure
- Maintenance of solid fuel heater
- Operation of solid fuel heaters
- Landscape maintenance
- Landscaping adjoining vehicular access
- Maintenance of stormwater treatment measures
- Retention of Natural Features
- No additional trees or scrub planting in viewing or solar access corridors of neighbours
- Environmental and Priority Weed Control
- Control of weeds

- No planting environmental weeds
- Maintain fauna access and landscaping provisions
- Noise Control
- Noise Nuisance from plant
- Swimming pool filter, pump and AC units [noise]
- Outdoor lighting
- Lighting Nuisance
- Plant room and equipment for operational conditions - Noise and vibrations